

ASSEMBLY BILL

No. 1287

Introduced by Assembly Member Evans

February 22, 2005

An act to amend Sections 3098.5 and 3252 of, and to add Section 3098.1 to, the Civil Code, relating to payment bonds.

LEGISLATIVE COUNSEL'S DIGEST

AB 1287, as introduced, Evans. Payment bonds.

Existing law defines a preliminary 20-day notice (public works) as a written notice from a claimant that was given prior to the assertion of a claim against a payment bond or the filing of a stop work notice on public work, and is required to be given under specified circumstances.

This bill would revise the definition of a preliminary 20-day notice (public work) to delete the requirement that the written notice from a claimant be given prior to the assertion of a claim against a payment bond, and would establish a separate provision governing a preliminary 20-day bond notice, as specified.

Existing law requires with regard to a contract entered into on or after January 1, 1995, in order to enforce a claim upon any payment bond given in connection with a public work, a claimant shall give the 20-day public works preliminary bond notice as provided in the definition of a preliminary 20-day notice public work. Existing law also provides that if the 20-day public work preliminary bond notice was not given pursuant to the conditions set forth under that definition, a claimant may enforce a claim by giving written notice to the surety and the bond principal, as specified, within 15 days after recordation of a notice of completion. However, if no notice of completion has been recorded, the time for giving written notice to the

surety and the bond principal is extended to 75 days after completion of the work of improvement.

This bill would delete the latter requirements with regard to a failure to meet the conditions set forth under the definition of a preliminary 20-day notice public work, and instead require a claimant to give 20-day notice under the new definition of a preliminary 20-day bond notice (public work) in order to enforce a claim upon a payment bond given in connection with a public work pursuant to a contract entered into on or after January 1, 1995.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3098 of the Civil Code is amended to
2 read:

3 3098. "Preliminary 20-day notice (public work)" means a
4 written notice from a claimant that was given prior to the
5 ~~assertion of a claim against a payment bond, or the filing of a~~
6 stop notice on public work, and is required to be given under the
7 following circumstances:

8 (a) In any case in which the law of this state affords a right to
9 a person furnishing labor or materials for a public work who has
10 not been paid therefor to ~~assert a claim against a payment bond,~~
11 ~~or to~~ file a stop notice with the public agency concerned, and
12 thereby cause the withholding of payment from the contractor for
13 the public work, any person that has no direct contractual
14 relationship with the contractor, other than a person who
15 performed actual labor for wages or an express trust fund
16 described in Section 3111, may file the preliminary notice, but no
17 payment shall be withheld from the contractor pursuant to that
18 notice unless the person has caused written notice to be given to
19 the contractor, and the public agency concerned, not later than 20
20 days after the claimant has first furnished labor, services,
21 equipment, or materials to the jobsite, stating with substantial
22 accuracy a general description of labor, service, equipment, or
23 materials furnished or to be furnished, and the name of the party
24 to whom the same was furnished. This notice shall be served by
25 mailing the same by first-class mail, registered mail, or certified
26 mail, postage prepaid, in an envelope addressed to the contractor

1 at any place the contractor maintains an office or conducts
2 business, or his or her residence, or by personal service. In case
3 of any public works constructed by the Department of Public
4 Works or the Department of General Services of the state, such
5 notice shall be served by mailing in the same manner as above,
6 addressed to the office of the disbursing officer of the department
7 constructing the work, or by personal service upon the officer.
8 When service is by registered or certified mail, service is
9 complete at the time of the deposit of the registered or certified
10 mail.

11 (b) Where the contract price to be paid to any subcontractor on
12 a particular work of improvement exceeds four hundred dollars
13 (\$400), the failure of that contractor, licensed under Chapter 9,
14 (commencing with Section 7000) of Division 3 of the Business
15 and Professions Code, to give the notice provided for in this
16 section, constitutes grounds for disciplinary action by the
17 Registrar of Contractors.

18 (c) The notice requirements of this section shall not apply to a
19 laborer described in Section 3089 or to an express trust fund
20 described in Section 3111.

21 (d) If labor, service, equipment, or materials have been
22 furnished to a jobsite by a claimant who did not give a
23 preliminary notice pursuant to subdivision (a), that claimant shall
24 not be precluded from giving a preliminary notice at any time
25 thereafter. The claimant shall, however, be entitled to ~~assert a~~
26 ~~claim against a payment bond and~~ file a stop notice only for
27 labor, service, equipment, or material furnished within 20 days
28 prior to the service of the preliminary notice, and at any time
29 thereafter.

30 (e) The failure to provide, pursuant to Chapter 974 of the
31 Statutes of 1994, a written preliminary notice to a subcontractor
32 with whom the claimant has contracted shall not affect the
33 validity of any preliminary notice provided pursuant to this
34 section.

35 SEC. 2. Section 3098.5 is added to the Civil Code, to read:

36 3098.5. "Preliminary 20-day bond notice (public work)"
37 means a written notice from a claimant that was given prior to
38 the assertion of a claim against a payment bond on public work,
39 and is required to be given under the following circumstances:

(a) In any case in which the law of this state affords a right to a person furnishing labor or materials for a public work who has not been paid therefor to assert a claim against a payment bond with the public agency and thereby cause the withholding of payment from the contractor for the public work, any person that has no direct contractual relationship with the contractor, other than a person who performed actual labor for wages or an express trust fund described in Section 3111, may file the preliminary notice, but no payment shall be withheld from the contractor pursuant to that notice unless the person has caused written notice to be given to the contractor, and to the public agency concerned, not later than 20 days after the claimant has first furnished labor, services, equipment, or materials to the jobsite, stating with substantial accuracy a general description of labor, service, equipment, or materials furnished or to be furnished, and the name of the party to whom the same was furnished. This notice shall be served by mailing the same by first-class mail, registered mail, or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business, or his or her residence, or by personal service. In case of any public works constructed by the Department of Public Works or the Department of General Services of the state, such notice shall be served by mailing in the same manner as above, addressed to the office of the disbursing officer of the department constructing the work, or by personal service upon the officer. When service is by registered or certified mail, service is complete at the time of the deposit of the registered or certified mail.

(b) If the contract price to be paid to any subcontractor on a particular work of improvement exceeds four hundred dollars (\$400), the failure of that contractor, licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, to give the notice provided for in this section, constitutes grounds for disciplinary action by the Registrar of Contractors.

(c) The notice requirements of this section shall not apply to a laborer described in Section 3089 or to an express trust fund described in Section 3111.

(d) If labor, service, equipment, or materials have been furnished to a jobsite by a claimant who did not give a

1 preliminary notice pursuant to subdivision (a), that claimant shall
2 not be precluded from giving a preliminary notice at any time
3 thereafter. The claimant shall, however, be entitled to assert a
4 claim against a payment bond only for labor, service, equipment,
5 or material furnished within 20 days prior to the service of the
6 preliminary notice, and at any time thereafter.

7 (e) The failure to provide, pursuant to Chapter 974 of the
8 Statutes of 1994, a written preliminary notice to a subcontractor
9 with whom the claimant has contracted shall not affect the
10 validity of any preliminary notice provided pursuant to this
11 section.

12 SEC. 3. Section 3252 of the Civil Code is amended to read:

13 3252. ~~(a)~~ With regard to a contract entered into on or after
14 January 1, 1995, in order to enforce a claim upon any payment
15 bond given in connection with a public work, a claimant shall
16 give the 20-day public works preliminary bond notice as
17 provided in Section ~~3098~~ 3098.5.

18 ~~(b) If the 20-day public work preliminary bond notice was not~~
19 ~~given as provided in Section 3098, a claimant may enforce a~~
20 ~~claim by giving written notice to the surety and the bond~~
21 ~~principal as provided in Section 3227 within 15 days after~~
22 ~~recording of a notice of completion. If no notice of completion~~
23 ~~has been recorded, the time for giving written notice to the surety~~
24 ~~and the bond principal is extended to 75 days after completion of~~
25 ~~the work of improvement.~~